IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.01.2006

CORAM:

THE HONOURABLE MR.JUSTICE R.SUDHAKAR

W.P.No.4700 Of 1996
& W.M.P.No.7542 of 1996

1. V.Sarangapani (deceased)
2. S.Illanjiyam
3. S.Kesavan
4. S.Venugopal (deceased)
5. Kanagavalli
6. S.Varadarajan
7. S.Selvarasan
8. Thilakavathi
9. Jayalakshmi
10. S.Jayaraman
11. Vijayalakshmi
12. V.Manimegalai
13. V.Prabhu Narayanan
14. Janaki Priya

(Petitioners 2 to 11 are substituted in the place of the deceased first petitioner as per the order dated 6.9.1999 in W.M.P.No.19808 of 1999)

(Petitioners 12 to 14 are substituted in the place of the deceased fourth petitioner as per the order dated 18.12.2003 in W.P.M.P.No.40907 of 2003)

.. Petitioners

Vs.

1. The Collector of Thanjavur
   District at Thanjavur.

2. The Special Tahsildar,
   (Adi Dravidar Welfare),
   Thiruvaiyaru Taluk,
   Thanjavur District.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certioraified Mandamus calling for the records relating to the Notification of the Collector of Thanjavur District, the first respondent herein published at Page 2 of the District Gazette Extra-ordinary dated 22.12.95 issued under Section 4(1) of the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 (Tamil Nadu Act 31 of

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1978) for the acquisition of lands for the provision of house-sites for Adi-Dravidars of Kalyanapuram village mentioned in the schedule to the notice of the 2nd respondent in Rca.No.Na.Ka.551/95-A dated 27.09.95 issued in Form II, Rule 5(1) of the Rules under the said Act in so far as the lands of the petitioners comprised in S.No.201/1.A, 201/2.A-1, 201/5.A.2, totally measuring 0.47.5 hectares, situate at Kalyanapuram village, Thiruvaiyaru Taluk, Thanjavur District and quash the same and forbear the respondents from acquiring the said lands of extent Hectares 0.47.5 belonging to the petitioner as set forth above.

For Petitioners : Mr. R.Subramanian
for M/s.G.Saravanan

For Respondents : Mrs.D.Malarvizhi,
Government Advocate

O R D E R

This petition has been filed challenging the Gazette notification dated 22.11.1995 issued under Section 4(1) of the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 (hereinafter called 'Act 31 of 1978') for providing house-sites to Adi-Dravidars of Kalyanapuram Village, Thiruvaiyaru Taluk, Thanjavur District.

2. Brief facts of the case are as under:

The land of the first petitioner (since deceased, represented by legal representatives, namely petitioners 2 to 11 and the fourth petitioner, since deceased, represented by legal representatives, namely petitioners 12 to 14) was sought to be acquired by the first respondent. Therefore, the notice under Section 4(2) in Form-I under Rule 3(i) of the Rules, 1999, framed under the Act 31 of 1978, was issued on 27.09.1995 by the Special Tahsildar calling upon the first petitioner to show cause as to why the property in question should not be acquired and to give their objections, if any, for the proposed acquisition. The objections were filed by the first petitioner on 17.10.1995 and an enquiry was conducted by the Special Tahsildar and the report was submitted to the District Collector on 16.11.1995. The District Collector rejected the objections by proceedings No.Na.Ka.41033/95 on 28.12.1995 and the same was served on the first petitioner on 09.01.1996. The notification under Section 4(1) was however issued on 22.12.1995.

3. Learned counsel for the petitioners has raised two issues in his challenge to the notification. The first contention is that the District Collector has not followed the procedures prescribed under the Act while passing the impugned notification under Section 4(1) and the second contention is that the Collector has passed the impugned notification under Section 4(1) of the Act without recording his satisfaction as contemplated and has proceeded to acquire the land based on the recommendation or compulsion of the Government. The contentions are inter-connected with each other and they are considered together.

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4. The contention of the learned counsel for the petitioners is that even before consideration and disposal of the objection on 28.12.1995, the notification under Section 4(1) was issued on 22.12.1995. Therefore, the Collector, at the time of issuing the notification under Section 4(1), did not consider the objections filed by the first petitioner. Thus, there was total non-application of the mind on the part of the Collector while passing the notification under Section 4(1) to the various grounds raised by the first petitioner in the objections submitted pursuant to the notice issued under Section 4(2), namely the enquiry as contemplated under Section 4(3)(a)(b). In view of the above, there is clear violation of the mandatory provision and the notification has been issued in a cursory manner without taking into consideration the objections of the first petitioner. Therefore, the satisfaction of the Collector as contemplated under Section 4 of the Act could not have been recorded as required. Hence, the notification issued under Section 4(1) is liable to be set aside. A counter affidavit has been filed by the second respondent-Special Tahsildar, admitting the fact that pursuant to the notice issued, as contemplated under Section 4(2), the objections were filed by the first petitioner and by proceedings in Rc.No.41033/95.II.A, dated 28.12.1995, the objections were rejected. Though the writ petition was filed pursuant to the notice issued under Section 4(2), notice for award enquiry was also issued and the first petitioner participated in the award enquiry proceedings and therefore, the writ petition has to be dismissed. As far as the order dated 28.12.1995 rejecting the objections is concerned, learned Government Advocate reiterated that the notice under Section 4(1) was issued on 22.12.1995 and the objections were dismissed by the proceedings of the Collector in Rc.No.41033/95.II.A, dated 28.12.1995, as borne out by the counter affidavit. The learned counsel for the petitioners draws the attention of the Court to the objections filed in the award enquiry proceedings, in particular, to the portion of the objections, in which, it is clearly stated that the land in question was sought to be acquired in spite of the objections filed by the first petitioner and the contentions made in the award enquiry are without prejudice to the abovesaid claim that the proceedings for acquiring the property in question are bad. It was therefore contended that at the earliest point of time, there was objection to the acquisition proceedings and the participation in the award enquiry was made without prejudice to the first petitioner's claim for dropping the acquisition proceedings. The petitioners' counsel also submitted that the first petitioner has approached the Court at the earliest point of time after verifying all the records and therefore, the contention of the respondents that the award enquiry had been initiated, or an award being passed, will not stand in the way of the challenge to the notification issued under Section 4(1). It is also submitted that though the award has been passed in February 1996, it has not been served on the first petitioner.

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5. The relevant provisions under the Act 31 of 1978, namely Section 4, reads as follows:

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"Section 4: Power to acquire land--(1) Where the District Collector is satisfied that for the purpose of any Harijan Welfare Scheme, it is necessary to acquire any land, he may acquire the land by publishing in the District Gazette a notice to the effect that he has decided to acquire the land in pursuance of this section.

(2) Before publishing a notice under sub-section(1), the District Collector or any officer authorised by the District Collector in this behalf, shall call upon the owner or any other person, who, in the opinion of the District Collector or the officer so authorised may be interested in such land, to show cause why it should not be acquired.

(3) (a) The District Collector may, where he has himself called upon the owner or other person to show cause under sub-section (2), pass such orders as he may deem fit on the cause so shown;

(b) Where any officer authorised by the District Collector has called upon the owner or other person to show cause under sub-section (2), the officer so authorised shall make a report to the District Collector containing his recommendations on the cause so shown for the decision of the District Collector. After considering such report the District Collector may pass such orders as he may deem fit."

6. In the case reported in 2002 (2) C.T.C. 1 (The Land Acquisition Officer and Special Tahsildar (LA) vs. R.Manickammal, a Division Bench of this Court, in paragraph 4, it is held as follows:

"State Act is completely different as the Government intervention is not at all contemplated — Collector is appropriate authority to decide acquisition of land — Provisions of State Act is absolute — Decision to acquire land was to be exercised only by Collector by application of mind independently — Legislature did not reserve any power to State Government to have supervisory role as it provided under Central Act — When legislature names particular authority to exercise power, only that authority has to exercise authority and nobody else."

7. In AIR 1995 Supreme Court 2114 (State of Tamil Nadu vs. Ananthi Ammal), the Supreme Court had the occasion to deal with the provisions of the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act and in paragraph 8 it was observed as follows:

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> "8. Sub-section (1) of S.4 empowers the District Collector, if he is satisfied that it is necessary to acquire some land for the purpose of an Harijan Welfare Scheme, to acquire that land by publishing in the District Gazette a notice to the effect that he has decided to acquire in pursuance of S.4. Sub-section (2) of S.4 obliges the District Collector or any Officer authorised by him in this behalf to call upon the owner or any other person who, in the opinion of the District Collector or the Officer so authorised, is interested in such land to show cause why it should not be acquired. Where the District Collector has called upon the owner or other person to show cause under sub-section (2), Cl.(a) of sub-section (3) requires him to pass orders on the cause so shown. Where an Officer is authorised by the District Collector has called upon the owner or other person to show cause under sub-section (2), Cl.(b) of S.3 requires that Officer to report to the District Collector his recommendations on the cause so shown and the District Collector is required to pass such orders as he may deem fit after considering the report. Sub-section (2) of S.4, therefore, obliges the acquiring authority to serve notice upon the land owner and other persons interested in the land to show cause why it should not be acquired. By reason of sub-section (3) of S.4, such cause has to be taken into account and orders passed in respect thereof. It is only thereafter that the acquiring authority can arrive at the satisfaction that it is necessary to acquire the land. The provisions of S.4, therefore, substantially encapsulate the provisions of Ss.4 to 6 of the Land Acquisition Act, the only major difference being that, under the said Act, it is the District Collector and not the State Government who must be satisfied that the land is required to be acquired. It does not appear to us that this is a provision which is unreasonable or arbitrary." (emphasis supplied).

8. On a reading of the above decision of the Division Bench of this Court and the Apex Court, it is clear that the responsibility is cast on the District Collector in exercise of his power to acquire the land under the provisions of Act 31 of 1978, diligently and consciously. The recording of satisfaction under Section 4(1) to acquire the land, comes into play only after considering and disposing of the objections. Therefore, when the statute prescribes certain procedures to be followed while acquiring the property of an individual, it is incumbent on the authority prescribed under the statute to strictly adhere to the procedures prescribed. The non-

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observance of the procedures prescribed under the Act and the Rules will clearly vitiate the whole proceedings. The authority invoking the power under a statute to acquire the property of the individual in exercise of the State's power of "eminent domain", is equally bound to follow the Rules and procedures prescribed under the statute before depriving the owner of his property. If the procedures as prescribed under the Act have not been followed by the authority concerned, the Court can take notice of such illegality or impropriety in the procedure and interfere by way of judicial review.

9. On the facts of the present case, it is clear that the Collector has proceeded to issue notice under Section 4(1) on 22.12.1995 even before he could consider the objections of the land owner. Admittedly, the order under Section 4(3)(b) of the Act has been passed on 28.12.1995, which clearly establishes the fact that the Collector has not considered the objections and the order passed pursuant to the notice issued in Form-I under Rule 3(i) in terms of Section 4(2), is nothing but an empty formality. Therefore, the Collector has not taken the objections into consideration and hence, the question of recording his satisfaction to acquire the land in question, does not arise.

10. A number of decisions of the Apex Court support the proposition that if the statute requires something to be done in a certain manner, then it has to be done in that manner or not at all.

(i) AIR 1976 SC 789 (Hukam Chand vs. Union of India):

> "18. It is well settled that where a power is required to be exercised by a certain authority in a certain way, it should be exercised in that manner or not at all, and all other modes of performance are necessarily forbidden. It is all the more necessary to observe this rule where power is of a drastic nature and its exercise in a mode other than the one provided, will be violative of the fundamental principles of natural justice. " (emphasis supplied).

(ii) AIR 1969 SC 634 (State of Gujarat vs. Shantilal) :

> "54. One more contention which was apparently not raised on behalf of the first respondent before the High Court may be briefly referred to. Counsel contends that Ss.53 and 67 in any event infringe Article 14 of the Constitution and were on that account void. Counsel relies principally upon that part of the judgment in P.Vajravelu Mudaliar's case, (1965 (1)SCR614=AIR 1965 SC 1017) which deals with the infringement of the equality clause of the Constitution by the impugned Madras Act. Counsel submits that it is always open to the State Government to acquire lands for a public

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purpose of a local authority and after acquiring the lands to vest them in the local authority. If that be done, compensation will be payable under the Land Acquisition Act, 1894, but says counsel, when land is acquired for a public purpose of a local authority under the provision of the Bombay Town Planning Act the compensation which is payable is determined at a rate prevailing many years before the date on which the notification under Section 4 of the Land Acquisition Act is issued. The argument is based on no solid foundation. The method of determining compensation in respect of lands which are subject to the town-planning scheme is prescribed in the Town Planning Act. There is no option under that Act to acquire the land either under the Land Acquisition Act or under the Town Planning Act. Once the draft town-planning scheme is sanctioned, the land becomes subject to the provisions of the Town Planning Act, and on the final town-planning scheme being sanctioned, by statutory operation the title of the various owners is readjusted and the lands needed for a public purpose vest in the local authority. Land required for any of the purposes of a town planning scheme cannot be acquired otherwise than under the Act, for it is a settled rule of interpretation of statutes that when power is given under a statute to do a certain thing in a certain way the thing must be done in that way or not at all: Taylor.v.Taylor,(1875(1)Ch.D.426).."
(emphasis supplied)

11. The fact that the award enquiry has been initiated or that the award has been passed will not cure the basic error in passing the notification under Section 4(1) of the Act. The initiation of the notification itself is at fault for the aforesaid reason and therefore, the respondents cannot shield themselves by stating that the award enquiry has been initiated and order has been passed. The incurable defect in passing the notification under Section 4(1), cannot therefore be justified in the eye of law. In similar circumstances, this Court in an unreported decision in W.P.No.23777 of 2001, by order dated 14.12.2001, has set aside the notification issued under Section 4(1) of the Act, even after the passing of the award and paragraph 8 of the said order dated 14.12.2001 reads as follows:

"8. In the present case, as stated above, no such particulars have been given. Hence, the impugned notice in Form No.I dated 29.6.2001 cannot be sustained. Though the petitioner has filed this writ petition after passing of the award, from the facts stated above, she could not file the said writ petition for want of

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copies of the notification and notice as they have not been supplied in response to her request. Hence, the respondents cannot sustain the notice in Form No.I. I am not dealing with the other arguments of the learned Counsel for the petitioner. Hence, this writ petition is allowed. If the respondents still want the land to be acquired, they can do so after following procedure contemplated under the Act. W.M.P..No.35117 of 2001 is closed. No costs."

12. For the reasons stated above, the impugned notification issued under Section 4(1) of the Tamil Nadu Act 31 of 1978, published in the District Gazette Extra-ordinary dated 22.12.1995, is set aside. It is open for the first respondent-District Collector, Thanjavur, to proceed further with the acquisition proceedings, if so required, as per law. The writ petition is allowed. No costs. W.M.P. is closed.

svki/cs

Sd/
Asst.Registrar

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Sub Asst.Registrar

To

1. The Collector of Thanjavur
   District at Thanjavur.

2. The Special Tahsildar,
   (Adi Dravidar Welfare),
   Thiruvaiyaru Taluk,
   Thanjavur District.

1 cc To Mr.G.Saravanan SR.1148.
1 cc To The Government Pleader SR.1187.

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